

Department of Energy

§ 1040.47

each sex where selection for teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex shall be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this subpart, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports, the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the Director, FAPD, is to consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services; and
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams, if a recipient operates or sponsors separate teams, will not constitute non-compliance with this section, but the Director, FAPD, may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary, secondary or post-secondary school level shall comply fully with this section as expeditiously as possible, but in no event later than one year from the effective date of this regulation.

§ 1040.45 Textbooks and curricular material.

Nothing in this regulation is to be interpreted as requiring, prohibiting, or abridging, in any way, the use of particular textbooks or curricular materials.

§ 1040.46 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated in this section by reference. These procedures may be found in subparts G and H of this part.

EMPLOYMENT PRACTICES

§ 1040.47 Employment.

(a) *General.* (1) No person shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in recruitment, employment consideration, or selection, whether for full-time or part-time employment, under any educational program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.